

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 98-55515-JRG
KERRY URQUHART and DONALD
URQUHART, Chapter 13
Debtors.

ORDER ON FEE APPLICATION OF
SILICON VALLEY LAW GROUP

I. INTRODUCTION

The Court has before it the Application For Compensation filed by Silicon Valley Law Group on March 25, 2002. The application seeks attorney's fees of \$14,176.50. For the reasons hereafter stated the application will be denied.

II. THE NATURE OF THE CASE

In examining the debtors' Statement of Affairs and Schedules, there is nothing indicating that this is a problem case. The debtors own a 10 acre property in Gilroy, California, on which they operate an equestrian training center. When the petition was filed, they valued the property at \$500,000 and they have mortgages amounting to \$421,000. They live in a mobile home on the property on which they owe \$50,000. They have no priority debts and only four unsecured

1 creditors.

2 Mrs. Urquhart works at the Santa Clara County Department of
3 Revenue where she earns \$3,693 per month with net take home pay of
4 \$2,514. Her Schedule I indicates that she also receives \$3,470 a
5 month from the operation of the equestrian center. Mr. Urquhart
6 receives \$2,000 a month from his retirement. Their combined monthly
7 income is \$8,284 and Schedule J indicates their monthly expenses are
8 \$8,029. Based on their income and expenses, the \$250 per month plan
9 payment they proposed seemed feasible.

10 **III. ATTORNEY'S FEES BILLED TO DATE**

11 Upon the confirmation of the debtors' plan, attorneys fees of
12 \$2,900 were allowed. This award was pursuant to the fee guidelines
13 maintained by the Court.¹ Pursuant to the guidelines, the \$2,900 was
14 composed of:

15 \$1,200 for the basic case; and an additional

16 \$ 500 if the case involves real property claims;

17 \$ 200 if the case involves vehicle loans or leases; and

18 \$1,000 if the case involves an operating business.

19 In filing the current application, Applicant used the Court's
20 form fee application which has been provided to the bar pursuant to
21 Bankruptcy Local Rule 9029-1. Paragraph 4 of the application seeks
22 information about prior fee applications filed. Applicant indicated
23 there were none. However, the file reveals two prior fee applications
24
25

26 ¹ The Chapter 13 fee guidelines are the Court's attempt to predict what the typical
27 case should cost a debtor when the specified aspects are present. It is the court's intent
28 to accurately predict the legal fees in a case in an attempt to avoid the additional cost
and delay of fee applications. As a general rule the fee guidelines accurately represent
the legal fees in the great majority of cases.

1 were allowed.² Counsel was allowed attorney's fees of \$9,279.50 on
2 June 25, 1999, and an additional \$2,202 on January 4, 2000. Thus, the
3 attorney's fees billed prior to the current application amount to
4 \$14,381.50.

5 The current application seeks further attorney's fees of
6 \$14,176.50. This would bring the billed attorney's fees to date to
7 \$28,558.

8 IV. DISCUSSION

9 Absent extraordinary problems, the cost of this case should have
10 approximated \$2,900. The problems faced by Applicant in this case
11 seem no more difficult than those faced by Chapter 13 practitioners
12 on a regular basis. Yet the requested fees have risen to \$28,558.
13 Nothing in the Court's file suggests this is a case of that magnitude.
14 As such, to evaluate the current request, the Court must review again
15 all of the work in the case from its inception. This is not
16 inappropriate since all interim allowances of attorney's fees are
17 tentative in nature. In re Taxman Clothing Co., 49 F.3d 310 (7th Cir.
18 1995).

19 The Urquhart petition was filed on July 10, 1998. The plan was
20 not confirmed until March 15, 1999, seven months later. By this time
21 \$12,179.50 in attorneys fees had been billed (\$2,900 allowed at
22 confirmation plus the first application for \$9,279.50). The time
23 records indicate the bulk of this time was spent in dealing with two
24 objections to confirmation.

25 The first objection was filed by Advanta Mortgage Corporation.

27 ² Kathryn Barrett has represented the debtors throughout this case. The negative
28 indication regarding prior fee applications could have resulted from the fact that Ms.
Barrett changed law firms during the course of the case.

1 It held the first mortgage on the debtors' Gilroy property. The
2 objection was filed because the debtors' plan failed to provide for
3 the \$5,932.62 in prepetition mortgage arrearages owed to Advanta.
4 While such omission can happen when the client does not give the
5 attorney the correct information, it is easily corrected. When the
6 plan was amended to provide for the arrearages, Advanta withdrew its
7 objection. While the time records are not very precise, it appears
8 that over \$1,000 was billed for this objection. Such billings are
9 excessive.

10 The second objection was filed by Joseph Herr. He held the
11 second mortgage on the Gilroy property. The debtors' original plan
12 acknowledged \$25,788.30 in arrearages on Herr's mortgage, but provided
13 only a \$40 per month payment to cure the default. As Herr pointed out
14 in his objection, interest on the arrearages accrued at \$430 per month
15 and, over the term of the plan, the arrearages would increase over
16 \$23,000. Clearly this was a plan that could not have been confirmed.

17 It took five months for the debtors to file their Second Amended
18 Plan, which now acknowledged arrearages of \$35,000. The plan also set
19 forth specific provisions for the manner in which Herr would be paid
20 together with deadlines for such payments. The objection was
21 resolved.

22 During this process, Applicant attended three confirmation
23 hearings at a cost of well over \$1,000. It appears that the handling
24 of these two objections resulted in billings of more than \$7,000.³

25
26 ³ By way of example, Applicant billed to review the objections to the initial plan.
27 "Receive and review objection to plan by Herr (.5)." The objection is three pages. "Receive
28 and review objection to plan by Advanta (.5)." This objection is also three pages. The Court
reviewed these objections in about five minutes.

1 The Court does not believe that compensation should be approved for
2 correcting plans that are clearly defective. Such plans only serve
3 to prolong the litigation and increase the cost to the parties.

4 The next pleadings in the Court's file is counsel's Second
5 Interim Application For Compensation which sought additional fees of
6 \$2,202.00. Of this request, \$939.50 was billed in connection with the
7 preparation of fee applications. While compensation can be allowed
8 for preparing fee applications, the amount billed is excessive. Both
9 requests used the Court's form application. Most of the entries on
10 the form are clerical in nature. The principal legal work is the
11 lawyer's description of the work performed. In the first application,
12 \$12,179.50, the description is a little over two pages. The
13 explanation in the second application is six lines. The billings are
14 excessive for the amount of work involved.

15 The current application attributes the fees, \$14,176.50, to
16 motions for relief from stay brought by GMAC and Advanta's successor,
17 Chase Manhattan, together with a motion to refinance the debtors'
18 residence. The Court would normally expect the cost of this work to
19 range from \$1,500 to \$3,000. With respect to relief from stay
20 motions, many attorneys representing secured creditors are paid a flat
21 fee of \$500-\$700 for handling the motion. Applicant's explanation is
22 that there were "inaccurate accountings." When debtors make sporadic
23 and partial payments on their mortgages, there are frequently
24 accounting questions. The resolution only requires the clients to
25 compare their records.

26 There is no indication of how the accounting problem could have
27 driven the cost of the motions up by thousands of dollars. Similarly,
28 there is no discussion of unusual problems with the motion to

1 refinance the residence. The billings again appear excessive.

2 Applicant billed at an hourly rate of \$240-\$275. Those rates are
3 at the high end of rates of attorneys in this community providing
4 services to consumers.⁴ Such rates presume competency and efficiency.

5 **CONCLUSION**

6 The Court has a duty to examine fee application notwithstanding
7 the absence of objections. In re Auto Parts Club, Inc., 211 B.R. 29
8 (9th Cir. BAP 1997). The burden is on the applicant to demonstrate
9 the reasonableness of the fees requested. In re Xebec, 147 B.R. 518
10 (9th Cir. BAP 1992). This burden has not been met and the requested
11 fees must therefore be denied.

12 DATED: _____

13
14 _____
15 JAMES R. GRUBE
16 UNITED STATES BANKRUPTCY JUDGE
17
18
19
20
21
22
23
24
25
26
27
28 _____

⁴ The Court maintains an hourly rate survey which is updated periodically.

1 Case No. 98-55515-JRG

2
3
4
5 UNITED STATES BANKRUPTCY COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 CERTIFICATE OF SERVICE

8
9 I, the undersigned, a regularly appointed and qualified Judicial
10 Assistant in the office of the Bankruptcy Judges of the United States
11 Bankruptcy Court for the Northern District of California, San Jose,
12 California hereby certify:

13 That I, in the performance of my duties as such Judicial
14 Assistant, served a copy of the Court's: ORDER ON FEE APPLICATION OF
15 SILICON VALLEY LAW GROUP by placing it in the United States Mail,
16 First Class, postage prepaid, at San Jose, California on the date
17 shown below, in a sealed envelope addressed as listed below.

18 I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct.

20 Executed on _____ at San Jose, California.

21
22
23
24
25
26
27
28
LISA OLSEN

20 Devin Derham-Burk
21 Chapter 13 Trustee
22 P.O. Box 50013
23 San Jose, CA 95150-0013

Kathryn E. Barrett, Esq.
SILICON VALLEY LAW GROUP
152 North Third St., Suite 900
San Jose, CA 95112

22 Office of the U.S. Trustee
23 280 So. First St., Rm. 268
24 San Jose, CA 95113